UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ROBERT R. TURVEY

Appeal 2008-0191
Application 09/872,378
Technology Center 3700

Decided: August 27, 2008

Before WILLIAM F. PATE, III, DAVID B. WALKER, and BIBHU R. MOHANTY, *Administrative Patent Judges*.

WALKER, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. §§ 6(b) and 134(a) (2002) from the final rejection of claims 1-36. We reverse.

Representative claim 1 reads as follows:

> 1. A method of producing plastic bags, the method comprising the steps of:
>
> folding a web of plastic to form an elongate

> folded web having free ends;
>
> securing closer tape to the free ends of the elongate folded web;
>
> forming end stops in the closer tape at spaced locations thereof, such step including the step of creating an indicia in each of the end stops, wherein the indicia designates at least one of a production line that produced the plastic bags and a time at which the bags were produced; and
>
> simultaneously severing and sealing the elongate folded web at each of the spaced locations to produce individual bags.

The reference set forth below is relied upon as evidence in support of the rejection:

Thieman	US 5,956,924	Sep. 28, 1999

Claims 1-36 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Thieman.

In rejecting claims under 35 U.S.C. § 103(a), the examiner bears the initial burden of establishing a prima facie case of obviousness. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). *See also In re Piasecki*, 745 F.2d 1468, 1472 (Fed. Cir. 1984). Only if this initial burden is met does the burden of coming forward with evidence or argument shift to the appellant. *Id.* at 1445. *See also Piasecki*, 745 F.2d at 1472. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. *See Oetiker*, 977 F.2d at 1445; *Piasecki*, 745 F.2d at 1472.

Each of the rejected claims require "creating an indicia . . . wherein the indicia designates at least one of a production line that produced the

plastic bags and a time at which the bags were produced" (*See, e.g.*, independent claims 1 and 19).

The Appellant argues that Thieman does not teach or suggest such indicia, and that such indicia have a new and nonobvious functional relationship with the plastic bag (Br. 4 & 6-7). The Appellant argues that indicia is defined as "a distinctive mark that indicates or that is felt to indicate the nature or quality of or existence or reality of something" (Br. 4; citing *Webster's Third New International Dictionary*). According to Appellant, Thieman discloses a pattern on the end stops that is no more distinctive than any other feature of the bag (Br. 4).

The Examiner found that indicia is broadly defined as "distinctive marks" (Answer 4; citing *Merriam Webster Dictionary*). The Examiner argues that crosshatching on the bag of Thieman is distinctive indicia that permits the machine operator to tell by looking if the weld was performed properly or not (Answer 4).

We agree with Appellant that Thieman does not teach indicia when that term is given its broadest reasonable interpretation in light of the Specification. The Examiner relies on the cross-hatch pattern shown on end stops 36 and 38 on the plastic bag in Figure 1 of Thieman as indicia. Thieman does not disclose any purpose for the cross-hatching, which is not described in its specification, or explicitly describe the function of the end stops 36 and 38. The end stops appear to serve the functions of stopping the travel of the slider 48 and providing a gripping surface for holding the bag when moving slider 48. We find no teaching in Thieman of using the cross hatching as distinctive marks or of any other distinctive marks that would meet the claim limitation of indicia under either the Appellant's or

Examiner's definition of the term. Because each of the appealed claims requires indicia, the Examiner has failed to make a prima facie case of obviousness of claims 1-36 over Thieman.

The decision of the Examiner is reversed.

REVERSED

hh

Kristin L. Chapman
S.C. Johnson & Son Home Storage
1525 Howe Street
Racine, WI 53403-2236